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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/265,788 03/10/99 LU R 08291/482001

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EXAMINER

GARRETT, D

ART UNIT

PAPER NUMBER

1774

13

DATE MAILED:

11/02/00

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trad marks

Office Action Summary

Application No.
09/265,788

Applicant(s)
Lu et al.

Examiner
Dawn Garrett

Group Art Unit
1774



☒ Responsive to communication(s) filed on 9-6-00

☐ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire three month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

☒ Claim(s) 1, 2, 4-9, and 11-15 is/are pending in the application.

Of the above, claim(s) _____ is/are withdrawn from consideration.

☐ Claim(s) _____ is/are allowed.

☒ Claim(s) 1, 2, 4-9, and 11-15 is/are rejected.

☐ Claim(s) _____ is/are objected to.

☐ Claims _____ are subject to restriction or election requirement.

Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

☒ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☒ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been

☒ received.

☐ received in Application No. (Series Code/Serial Number) _____.

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____.

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

☐ Notice of References Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

— SEE OFFICE ACTION ON THE FOLLOWING PAGES —

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DETAILED ACTION

Continued Prosecution Application

1. The request filed on September 6, 2000 for a Continued Prosecution Application (CPA) under 37 CFR 1.53(d) based on parent Application No. 09/265,788 is acceptable and a CPA has been established. An action on the CPA follows.
2. This action is in response to the preliminary amendment, Paper No. 12, dated September 6, 2000. New claim 15 was added. Claims 1-2, 4-9, and 11-15 are pending.
3. The rejection of claims 1 and 7 under 35 U.S.C. 112, second paragraph, according to paper no. 4, paragraph 7 is withdrawn.
4. The rejection of claim 1 is again under 35 U.S.C. 112, second paragraph, according to paper no. 4, paragraph 5 is withdrawn.
5. The rejection of claims 13 and 14 due to the phrase "effective amount" is withdrawn due to the amendment of paper no. 12.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(f) or (g) prior art under 35 U.S.C. 103(a).

Evaluations of the level of ordinary skill in the art require consideration of such factors as various prior art approaches, types of problems encountered in the art, rapidity with which innovations are made, sophistication of technology involved, educational background of those actively working in the field, commercial success, and failure of others. The "person having ordinary skill" in this art has the capability of understanding the scientific and engineering principles applicable to the claimed invention. The evidence of record including the references and/or admissions are considered to reasonably reflect this level of skill.

7. Claims 1-2, 4-9, and 11-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Richter (US 5,728,667).

Richter teaches germicidal light-duty dishwashing detergent composition in either a gel, liquid, or semi-liquid form, which comprises 0.5 - 2.75 parts quaternary ammonium germicidal compound (per instant claims 1, 2, 7, and 8), 10-40 parts by weight of a nonionic surfactant (per instant claims 1, 3- 5 and 9-11), 0.01 - 30 parts by weight of a suds boosting agent, and water

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(see abstract). Nonionic surfactants which may be used include block copolymers (see col. 8, line 4), primary aliphatic alcohol ethoxylates (see col. 8, line 14), alkylmonoglycosides and alkylpolyglycosides (see col. 9, lines 54-67 and col. 10, lines 1-51). Glucocon 625 is taught as an example alkylpolyglycoside (see col. 10, lines 59-60). Also included in the composition may be detergency builder components per instant claim 7 (see col. 13, lines 53-65). Further optional components may include one or more surface active agents, chelating agents, sequestrants, coloring agents, solvents including alcohols, pH modifying agents, fragrances, fillers, and optical brighteners (see col. 12, line 61-col. 13, line 8) per instant claims 1 and 7. The Richter compositions include water added to the balance of constituents present so to provide 100% by weight of the concentrate composition (see col. 12, lines 49-53) per instant claims 1 and 7. Most preferably, the Richter composition is diluted in the range of 1:100 - 1:10,000 for use, but "the actual dilution selected is in part determinable by the degree and amount of dirt and grime to be removed from the surfaces and articles being cleaned, the amount of mechanical force..." (see col. 15, lines 41-58) per instant claims 6 and 10. The Richter composition are taught to be applied to hard surfaces (see col. 1, lines 15-19) per instant claims 11 and 12. Richter fails to teach a polymeric cationic surfactant based on a polyquaternary ammonium salt, however, as presently written, instant claims 1 and 7 recite this ingredient as optional. Accordingly, it would have been obvious to one of ordinary skill in the art at the time of applicant's invention to have made compositions and practiced methods as recited in instant claims 1-12, because all limitations of these claims are generally taught by Richter.

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Response to Arguments

8. Applicant's arguments filed September 6, 2000 have been fully considered but they are not persuasive. Applicant again argues the prior art necessarily requires carboxylates and that glycosides have not been described as "essential" to the prior art compositions. The examiner maintains the instant independent claim uses open claim language which does not exclude the presence of carboxylates in the compositions. With regard to the selection of glycosides as nonionic surfactants in the compositions, the prior art discloses glycosides as suitable surfactant and although glycosides are not used in an example in the prior art, non-preferred embodiments can be indicative of obviousness (see *In re Lamberti*, 192 USPQ 278 (CCPA 1976); *In re Boe*, 148 USPQ 507 (CCPA 1976); *In re Kohler*, 177 USPQ 399 (CCPA 1973)).

Again, applicant also urges the declaration of Robert Zhong Lu under 37 CFR 1.132 "illustrates that the important and significant results obtained require a foreknowledge of the properties of alkylpolyglycosides and their beneficial effects in order to produce the present inventive compositions." Applicant is suggesting in the data submitted describing Draize Eye tests with the inventive compositions vs. comparison compositions shows the importance of using alkylpolyglycosides in the inventive compositions. The examiner submits that the data is insufficient to establish unexpected results because components other than the alkylglycoside, GlucoPON, were varied. In other words, there is a lack of clear side-by-side comparisons between the inventive compositions and the comparison compositions to establish unexpected results. The rejection is respectfully maintained.

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Conclusion

9. Applicant is reminded that any evidence to be presented in accordance with 37 C.F.R. § 1.131 or 1.132 should be presented prior to final rejection in order to be considered timely.

10. Should you have any questions concerning this communication, please direct them to Dawn Garrett at 703-305-0788. The examiner can be reached at this number from about 8:00 am to about 5:00 pm E.S.T. Monday-Friday. If attempts to reach the examiner by telephone prove unsuccessful, the examiner's supervisor, William Krynski, can be reached at 703-308-2376. Please allow the examiner twenty-four hours to return your call.

A facsimile center has been established for Group 1700 on the 8th floor of Crystal Plaza 3. The hours of operation are Monday through Friday, 8:45 am to 4:45 pm. The fax numbers for Art Unit 1700 are 703-305-3599 for official after-final faxes, and 703-305-5408 for all other official faxes. Use of the Group 1700 center will facilitate rapid delivery of materials to examiners in Art Unit 1774.

Any inquiry of a general nature, or those relating to the status of this application should be directed to the group receptionist whose telephone number is 703-308-2351.

DG
D.G.

November 1, 2000

William Krynski
Supervisory Patent Examiner
Technology Center 1700